



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2021-0212; FRL-8738-02-R10]

#### **Air Plan Approval; OR; Updates to Adoption by Reference of Federal Provisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the Oregon State Implementation Plan (SIP) submitted on January 29, 2021. The revision updates the date by which Federal provisions are adopted by reference into the Oregon SIP, making air quality requirements more current.

**DATES:** This final rule is effective [Insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2021-0212. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov>, or please contact the person listed in the FOR FURTHER INFORMATION CONTACT section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Kristin Hall (15-H13), EPA Region 10, 1200 Sixth Avenue (Suite 155), Seattle WA, 98101, (206) 553-6357, [hall.kristin@epa.gov](mailto:hall.kristin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we” or “our” is used, it refers to the EPA.

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### **I. Background**

On January 29, 2021, the Oregon Department of Environmental Quality submitted a SIP revision to the EPA for approval. The revision, State effective January 21, 2021, updates the adoption by reference of Federal requirements used throughout the Oregon air quality rules. Oregon's air quality rules are codified in Divisions 200 through 268 of Chapter 340 of the Oregon Administrative Rules (OAR).

We proposed to approve the revisions on April 5, 2021 (86 FR 17569). The reasons for our proposed approval were included in the proposal and will not be restated here. The public comment period for our proposal closed on May 5, 2021. We received two public comments.

### **II. Response to Comments**

#### *Comments*

The commenters raised a wide range of concerns, including but not limited to the importance of human rights, legal recourse for victims of crimes, and just compensation for personal injury and loss of property. Most of the concerns raised by the commenters are broad in nature and do not identify any specific requirements that are inconsistent with Clean Air Act (CAA) requirements. Therefore, we consider them outside the scope of this action. However, we have determined that one issue raised is within the scope of this action and requires a response. Specifically, one commenter alleged, generally, that incorporation by reference is illegal.

#### *Response*

We disagree with the commenter's assertion that incorporation by reference is illegal. On the contrary, section 552(a) of title 5, United States Code provides that reasonably available materials are considered published in the Federal Register when those materials are incorporated

by reference therein and approved by the Director of the Federal Register. The Code of Federal Regulations (CFR) at 1 CFR part 51 sets forth the requirements that agencies must follow to incorporate materials by reference. In this rulemaking, the EPA is complying with the law by adhering to the requirements of 1 CFR part 51, as authorized by section 552(a) of title 5, United States Code.

To the extent the commenter has concerns about Oregon's incorporation of certain Federal regulations by reference into State rules, Oregon promulgated the rule revisions in accordance with State and CAA procedural requirements. Documentation of Oregon's rulemaking process is included in the docket for this action. Also, in approving SIPs under section 110 of the Clean Air Act (CAA), Congress gave states the lead in developing plans to implement, maintain, and enforce the national ambient air quality standards (NAAQS) – standards designed to protect public health and welfare from air pollution. In reviewing state plans, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. *See* 42 U.S.C. 7410(k) and 40 CFR 52.02(a). In this case, Oregon submitted State administrative rules to the EPA and requested that the EPA approve the rules into the Oregon SIP. Our action on the January 29, 2021 Oregon submission, with which the commenter takes issue, approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. Therefore, we are finalizing our action as proposed.

### **III. Final Action**

The EPA is approving, and incorporating by reference, revisions to the Oregon SIP submitted on January 29, 2021. Upon the effective date of this action, the Oregon SIP will include the following regulations, State effective January 21, 2021:

- OAR 340-200-0035, Reference Materials; and
- OAR 340-244-0030, General Provisions for Stationary Sources: Definitions, only to the extent needed to implement the requirements for gasoline dispensing facilities in Division 244 that are approved into the SIP for the purposes of regulating VOC emissions.

#### **IV. Incorporation by Reference**

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of Oregon regulatory provisions as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally-enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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<sup>1</sup> 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The

EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**Insert date 60 days after date of publication in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 3, 2021.

Michelle L. Pirzadeh,  
Acting Regional Administrator,  
Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

#### Subpart MM—Oregon

2. In § 52.1970, paragraph (c), amend table 2 by revising the entries for “200-0035” and “244-0030” and revising footnote number 3 to read as follows:

#### § 52.2470 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

**TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR)<sup>1</sup>**

State citation	Title/subject	State effective date	EPA approval date	Explanations
<b>CHAPTER 340—DEPARTMENT OF ENVIRONMENTAL QUALITY</b>				
*	*	*	*	*
<b>Division 200—General Air Pollution Procedures and Definitions</b>				
*	*	*	*	*

200-0035	Reference Materials	1/21/2021	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
*	*	*	*	*
<b>Division 244—Oregon Federal Hazardous Air Pollutant Program<sup>2 3</sup></b>				
<b>General Provisions for Stationary Sources</b>				
244-0030	Definitions	1/21/2021	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
*	*	*	*	*

\* \* \* \* \*

<sup>3</sup>The EPA approves Division 244 only to the extent needed to implement the requirements for gasoline dispensing facilities that are approved into the SIP for the purpose of regulating VOC emissions.

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[FR Doc. 2021-16947 Filed: 8/10/2021 8:45 am; Publication Date: 8/11/2021]